FLORENCE BAILES v. DR. NG JIT LEONG

[O.C.J. (Arulanandom J.) June 8, 25 & July 7, 1981]
[Penang — Civil Suit No. 209 of 1981]

Club — Social Club — Lady associate suspended from club — Injunction against club — Application by club for dissolution of court order — Question of rules of natural justice — Whether court may interfere.

The defendant applied for the dissolution of an order of court allowing an injunction against the Penang Club from suspending the plaintiff from the Penang Club premises and all privileges accruing to members thereof until the trial of the action. The issue before the court was purely a question of law as to whether the committee of the club had exceeded their powers in suspending the plaintiff without giving her an opportunity to defend herself and whether principles of natural justice applied to this case. The defendant relied on rule 51(i) of the Rules of the Club which allowed the committee to withdraw all privileges granted to Lady Associates without giving any reason.

Held, allowing the defendant's application: (1) although the rules of an unincorporated body may appear to give the managing body absolute and unfettered powers of expulsion or suspension of members from that body, the courts would still under certain conditions interfere with the arbitrary exercise of such powers;

(2) the courts would only interfere if such decisions affect the right of an individual to work and earn his livelihood or when an individual's right to property has been affected. The courts have been loth to interfere in the affairs of purely social clubs as they have held the relationship there to be of such a personal and intimate nature that the management should be allowed to administer the club without interference from the courts;

(3) the courts will still not grant an injunction to give a member a right to enter a social club, unless there are proprietary rights attached to it, because it is too personal to be specially enforced;

(4) rule 5(i) of the Rules of the Penang Club is clear and the Committee has absolute power to withdraw privileges accorded to Lady Associates without any reason being given and rule 63 which requires enquiry before its committee only applies to ordinary members; therefore the plaintiff's suspension did not breach the rules of natural justice;

(5) as the plaintiff had no proprietary interests in the Club she could not obtain any relief by way of injunction and the courts should not interfere with the decision of the Penang Club Committee which has full responsibility for the administration and discipline of the Club. Therefore, the said injunction ought to be dissolved.

Cases referred to:-

(1) *John* v. *Rees & Ors.* [1969] 2 All E.R. 274, 306.
(2) *Lee* v. *Showmen's Guild of Great Britain* [1952] 1 All E.R. 1175, 1180.
(3) *Baird* v. *Wells* (1890) 44 Ch. D. 661.
(4) *McInnes* v. *Onslow Fane & Anor.* [1978] 3 All E.R. 211.
(5) *Nagle* v. *Feilden & Ors.* [1966] 1 All E.R. 689.

CIVIL SUIT.

T.R. Hepworth (*C.S. Ong* with him) for the applicant/defendant.

R.J. Manecksha for the respondent/plaintiff.

Arulanandom J.: This was an application by the defendant Dr. Ng Jit Leong (sued on his own behalf and on behalf of all other members of the Committee of the Penang Club, hereinafter referred to as the Penang Club) for an order that the Order of this Court dated June 8, 1981 allowing an injunction against the Penang Club from suspending the plaintiff from the Penang Club premises and all privileges accruing to members thereof until the trial of this action or further order may be dissolved with costs.

At the outset counsel for the plaintiff applied for the matter to be transferred to open court as he wished to cross-examine two deponents Mr. Wong and Madam Teoh who had filed affidavits in support of the defendant's claim that the plaintiff had misconducted herself in the Club and such misconduct was injurious to the character of the Club.

Counsel for defendant objected to this application as he submitted that to allow this application would in fact mean that it would be the trial of the action and the stage for trial had not been reached as the present hearing was only in respect of the injunction against the defendant.

Apart from the fact that this hearing was not a trial of the action, the court was also of the opinion that the issue at this stage was purely a question of law as to whether the Committee of the Club had exceeded their powers in suspending the plaintiff without giving her an opportunity to defend herself and whether principles of natural justice applied to this case. Hence as the affidavits referred to by counsel for plaintiff only dealt with facts which were irrelevant to the issues before the court, the court ruled that submissions on law would be heard first and if the court held that principles of natural justice applied in this matter, then the court would give a ruling on the application of plaintiff's counsel.

The history of the matter was that on May 23, 1981 in a letter marked "Private & Confidential" the Committee of the Penang Club acting under powers conferred on them by rule 51(i) of the Rules of the Club suspended her from the Club premises and all facilities accruing thereto for a period of three months from the date thereof.

The plaintiff thereafter filed a writ against the Committee of the Club for a declaration that the decision of the Committee made on or about May 23, 1981 suspending the plaintiff for a period of three months from the Club premises and all facilities accruing thereto was null and void and prayed for an injunction to restrain the said Committee from enforcing the said suspension or interfering with the plaintiff in her use and enjoyment of the benefit of membership of the said Club, and damages and costs.

On the same date the plaintiff applied by summons-in-chambers for an injunction restraining the Penang Club from suspending plaintiff. This was an *ex parte* application supported by the affidavit of the plaintiff. The gravamen of her complaint was that the defendant had not told the plaintiff what the cause of the suspension was nor given her an opportunity to defend herself and had thereby breached the rules of natural justice.

On June 8, 1981 Judicial Commissioner E.E. Sim granted the injunction and on June 25, 1981 the defendant appeared before me to have that injunction dissolved.

The whole question revolves around the interpretation of rule 51(i) and rule 63 and was therefore a question of law. Hence it was the opinion of the court that many of the affidavits filed by the defendant to justify the action on facts would only have been relevant if the principles of natural justice had been involved.

The plaintiff relied very heavily on rule 63 which reads as follows: —

"63. If any member shall misconduct himself either in or out of the Club and after enquiry and opportunity for explanation given in the opinion of the Committee such misconduct is injurious to the character and interest of the Club or if any member be guilty of any breach of the Rules and Bye-laws of the Club, the Committee shall have power to suspend such member for any period not exceeding three months. Any member so suspended shall have the right of appeal to a special general meeting and he may request the Committee to call one for such purpose and the provisions of Rule 64 shall apply as to the constitution of the meeting."

According to the plaintiff she came under the ambit of that rule and she had not been given an opportunity for explanation and hence the Committee had acted *ultra vires*. The defendant relied wholly on rule 51(i) which reads as follows: —

"The Committee may at any time without assigning any reason withdraw all privileges granted to visiting, honorary, subscribing members and Lady Associates."

In the opinion of the defendant Lady Members by virtue of rule 51(i) were not included among members referred to in rule 63.

Questions of this nature have been raised before the courts on many occasions. It has generally been held that although the rules of an unincorporated body may appear to give the managing body absolute and unfettered powers of expulsion or suspension of members from that body, the courts would still under certain conditions interfere with the arbitrary exercise of such powers. A careful study of the situation when the courts have interfered with the decisions of managing bodies establish that the courts would only interfere if such decisions affect the right of an individual to work and earn his livelihood or when an individual's right to property has been affected. The courts have been loth to interfere in the affairs of purely social clubs as they have held the relationship there to be of such a personal and intimate nature that the management should be allowed to administer the club without interference from the courts.

In *Halsbury's* Laws of England, Fourth Edition, Volume 6, paragraph 239, under the heading "Prerequisites of decision to expel" the author states: —

"The principles of natural justice must also be observed in exercising a power of expulsion, unless it plainly appears, on the true construction of the rules, that the power was intended to be absolute...."

In *John* v. *Rees & Ors.*[1] Megarry J. examined the subject at length and states as follows: —

"Accordingly, I must consider what are the principles of natural justice which *prima facie* are applicable, and whether or not there is anything to oust their application. In doing this, it is convenient to refer to a case concerning an avowed expulsion from a political party which came before me some three weeks after the conclusion of the argument in this case, namely, *Fountaine* v. *Chesterton*. It may be that there is other authority on the point that I have in mind: but none was cited to me in that case or in this. As it seems unlikely that the case will be fully reported it may be convenient if I set out as best I can from my notes the passages in that judgment which I have in mind."

In that case I said:

"The expression 'the principles of natural justice' is, I think, now a technical term. As Maugham, J., pointed out in *Maclean* v. *Workers' Union*, among most savages there is no such thing as justice in the modern sense. In a state of nature, self-interest prevails over any type of justice known to civilisation; the law of the jungle is power, not justice. Nor am I clear what the word 'natural' adds to the word 'justice'. It cannot be intended to indicate the antithesis of 'unnatural justice', which would indeed be an odd concept; I imagine that it is intended to suggest justice that is simple or elementary, as distinct from justice that is complex, sophisticated and technical.

The term 'natural justice' has often been used by eminent judges, and although Maugham J., said that it 'is, of course, used only in a popular sense', I would prefer to regard it as having become something of a term of art. To extract the quintessence of the process of justice is, indeed, notoriously difficult. 'The ideas of natural justice', said Iredell J., 'are regulated by no fixed standard; the ablest and the purest men have differed on the subject': *Calder* v. *Bull*. In *Ridge* v. *Baldwin* Lord Hodson referred to a 'certain vagueness' in the term, but rejected the view that because the requirements of natural justice depended on the circumstances of the case, this made natural justice so vague as to be inapplicable. He added: 'No one, I think, disputes that three features of natural justice stand out — (1) the right to be heard by an unbiased tribunal; (2) the right to have notice of charges of misconduct; (3) the right to be heard in answer to those charges'. I do not think that I shall go far wrong if I regard these three features as constituting in all ordinary circumstances an irreducible minimum of the requirements of natural justice. I need only add that all these requirements are essentially procedural in nature; I regard natural justice as a distillate of due process of law."

I then turned to consider a submission based on the judgment of Denning L.J., in *Lee* v. *Showmen's Guild of Great Britain*, to the effect that public policy would invalidate any stipulation excluding the application of the rules of natural justice to a domestic tribunal, and said that although I respectfully inclined to the same view, it seemed to have been expressed *obiter* and was not mentioned by the other members of the court, so that I would hesitate to decide the case on that ground. I went on to refer to the rule which was said to justify the expulsion, and then said this:

"It is trite law that the rules of an unincorporated association form a contract between all the members of that association. It is, indeed, a somewhat special form of contract; but subject to that, what I am required to do is to construe the terms of a contract. Where the terms in issue deal with the exercise of a power of peremptory suspension or termination of the rights of one of the parties to such a contract, then I think that the common expectation of mankind would be that the power would be exercised only in accordance with the principles of natural justice unless the contrary is made plain. This expectation rests upon high and ancient authority. When a member of a university was deprived of his degrees without being given an opportunity to defend himself, Fortesque J., said: 'The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. Adam (says God) where art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldst not eat? And the same question was put to Eve also': *R.* v. *University of Cambridge*. Even if the law permits the principles of natural justice to be effectually excluded by suitable drafting, I would not readily construe the rules as having achieved this result unless they left me in no doubt that this was the plain and manifest intention. Put a little differently, I would say that if there is any doubt the applicability of the principles of natural justice will be given the benefit of that doubt. The cry 'That isn't fair' is to be found from earliest days, in nursery, street and

school alike; and those who wish to confer on the committees or other governing body of a club or association a power to act unfairly or arbitrarily in derogation of a common and universal expectation must make it plain beyond a peradventure that this has been done. This view is, I think, at least consistent with the approach of Romer L.J., in *Lee* v. *Showmen's Guild of Great Britain*, on a not dissimilar point, where he said that it would require 'the use of clear language' before he was satisfied that the members of any body such as the trade union in question had agreed to leave the construction of the trade union's rules to the committee, to the exclusion of the courts.

Having now had the opportunity of reconsidering the language that I used in that case, I must say that I can see no reason for resiling from it. Before resorting to public policy, let the rules of the club or other body be construed: and in the process of construction, the court will be slow to conclude that natural justice had been excluded...."

In considering whether the rules of natural justice have been infringed by the fact that a Lady Associate like the plaintiff was not given an opportunity to be heard before the privileges accorded to her were withdrawn one has to consider the effect of rule 51(i) of the Rules of the Penang Club. This gives absolute powers to the Committee to suspend a Lady Associate without assigning any reason and without any enquiry. The existence of the rule clearly indicates that rule 63 is not intended to apply to anyone else but ordinary members, because if rule 63 was intended for all members rule 51(i) would clearly be meaningless. The plaintiff was approved as a Lady Associate purely by virtue of rule 32(c) of the Club which reads as follows: —

"32(c) The ladies of the family of any Ordinary Member, Associate Member, Subscribing Member, Honorary Member and Visiting Member, who shall be nominated by such Ordinary Member, Associate Member, Subscribing Member, Honorary Member or Visiting Member and approved by the Committee shall be entitled to the use of the Club. They shall be called Lady Associates and a list of all Lady Associates shall be kept by the Secretary."

By virtue of rule 63 which says that only ordinary members shall have voting rights and proprietary rights of the Club, Lady Associates have no such right at all. Rule 73 reads as follows: —

"73. Only ordinary members shall have a voice in the management of the Club or shall be entitled to vote at any general meeting whether ordinary or special, or to claim any share of the property of the Club upon its dissolution. There shall be no voting by proxy."

The argument that the word "member" in rule 63 includes Lady Associates is devoid of all merit. If it was intended that Lady Associates be included, the phraseology "member or Lady Associate" as appears in rules 35, 36, 37, 38, 39 and 62 would have been used. Those rules read as follows: —

"35. Subject to Rules 35, 51(j) and 51(k) any member or Lady Associate shall be entitled to introduce a guest or guests to the Club.

36. A member or Lady Associate introducing a guest shall on each day on which such guest uses the Club enter the name and address of the guest and his or her own name in the book kept for that purpose in the Club. Guest(s) shall always be accompanied by the member(s) introducing them.

37. No one shall be introduced as a guest to the Club on more than two days in any one month, provided that any one passing through Penang may be introduced as a guest to the Club for not more than three days.

38. No member or Lady Associate shall at any time introduce as a guest anyone who has been expelled or suspended from the club or whose ballot for election has been unfavourable for any cause whatever.

39. Members or Lady Associates shall be responsible for the observance by their guests of the Rules and Bye-laws of the Club.

....

62. ....

For every Member and Lady Associate and/or their guests remaining in the Club after 1.30 a.m. (Saturday excepted) a charge will be made as follows: —

...."

It is quite clear by these rules that when a member is referred to in the rules if lady members were to be included they would be specially mentioned. But even if it is considered that rule 51(i) of the Penang Club does not give absolute powers the courts will still not grant an injunction to give a member a right to enter a social club, unless there are proprietary rights attached to it, because it is too personal to be specifically enforced. In the Court of Appeal case *Lee* v. *Showmen's Guild of Great Britain*[2] at page 1180 Lord Denning L.J. states as follows: —

"The jurisdiction of a domestic tribunal, such as the committee of the Showmen's Guild, must be founded on a contract, express or implied. Outside the regular courts of this country, no set of men can sit in judgment on their fellows except so far as Parliament authorises it or the parties agree to it. The jurisdiction of the committee of the Showmen's Guild is contained in a written set of rules to which all the members subscribe. This set of rules contains the contract between the members and is just as much subject to the jurisdiction of these courts as any other contract.

It was once said by Sir G. Jessel M.R., that the courts only intervened in these cases to protect rights of property: see *Rigby* v. *Connol* (14 Ch. 487); and other judges have often said the same thing: see, for instance *Cookson* v. *Harewood* ((1932) 2 K.B. 481 and 488). But Fletcher Moulton L.J., denied that there was any such limitation on the power of the courts: see *Osborne* v. *Amalgamated Society of Railway Servants* ((1911) 1 Ch. 562); and it has now become quite clear that he was right: see *Abbott* v. *Sullivan*. *Abbott's* case shows that the power of this court to intervene is founded on its jurisdiction to protect rights of contract. If a member is expelled by a committee in breach of contract, this court will grant a declaration that their action is *ultra vires*. It will also grant an injunction to prevent his expulsion if that is necessary to protect a proprietary right of his, or to protect him in his right to earn his livelihood: see *Amalgamated Society of Carpenters, Cabinet Makers & Joiners* v. *Braithwaite*, but it will not grant an injunction to give a member the right to enter a social club, unless there are proprietary rights attached to it, because it is too personal to be specifically enforced: see *Baird* v. *Wells* (44 Ch. D. 675, 676). That is, I think, the only relevance of rights of property in this connection. It goes to the form of remedy, not to the right."

And furthermore at page 1181 Lord Denning goes on to say:

"The question in the present case is: To what extent will the courts examine the decisions of domestic tribunals on points of law? This is a new question which is not to be solved by turning to the club cases. In the case of social clubs the rules usually empower the committee to expel a member who, in their opinion, has been guilty of conduct detrimental to the club, and this is a matter of opinion and nothing else. The courts have no wish to sit on appeal from their decisions on such a matter any more than from the decisions of a family conference. They have nothing to do with social rights or social duties. On any expulsion they will see that there is fair play. They will see that the man has notice of the charge and a reasonable opportunity of being heard. They will see that the committee observe the procedure laid down by the rules, but will not otherwise

interfere: see *Labouchere* v. *Earl of Wharncliffe, Dawkins* v. *Antrobus.*"

Again in *Baird* v. *Wells*[3] at page 661 the head-notes read as follows: —

"In the case of an ordinarily constituted club, in which members have rights of property, a member whose rights have been interfered with by the committee is entitled to ask the court to consider whether the rules of the club have been observed; whether anything has been done which is contrary to natural justice; and whether the decision complained of has been come to *bona fide;* but in the case of a proprietary club, in which members have no right of property, a member who has been expelled by a committee, though the proceedings were irregular, cannot obtain relief by way of injunction, but will be left to obtain it in damages.

Appeal of the plaintiff dismissed, on his own application, with costs."

Again at page 675 Stirling J. states as follows:

"The question then arises, whether this case falls within the class of cases in which the court grants relief by way of injunction. In all the cases of this nature, in which up to the present time an injunction has been granted, the club has been possessed of property (such as a freehold or a leasehold house, furniture, books, pictures, and money at a bank), which was vested in trustees upon trust to permit the members for the time being to have the personal use and enjoyment of the club-house and effects in and about it. But the interest of the members is not confined to that purely personal right. The members might, if they all agreed, put an end to the club; and in that case they would be entitled, after the debts and liabilities of the club were satisfied, to have the assets divided among them. In the present case the club, as such, has no property. The club-house and furniture belong to the defendant Wells, and by him the subscriptions are taken. He is not a trustee, but the owner, of the property. If the club were dissolved at any moment there would be nothing whatever to divide among the members. Now the interference of the court in the cases which have hitherto occurred has been based on the rights of property of which the member had been improperly deprived. The general principle was laid down by Lord Cranworth in the case of *Forbes* v. *Eden,* where he said: "Save for the due disposal and administration of property, there is no authority in the courts of either England or Scotland to take cognizance of the rules of a voluntary society entered into merely for the regulation of its own affairs." And the same principle was stated at greater length by the late Master of the Rolls (Sir George Jessel) in the case of *Rigby* v. *Connol.* In that case the plaintiff sought to restrain the defendants from excluding him from the benefits of a trade union of which he was a member.

Sir George Jessel said: 'The first question that I will consider is, what is the jurisdiction of a Court of Equity as regards interfering at the instance of a member of a society to prevent his being improperly expelled therefrom? I have no doubt whatever that the foundation of the jurisdiction is the right of property vested in the member of the society, and of which he is unjustly deprived by such unlawful expulsion. There is no such jurisdiction that I am aware of reposed, in this country at least, in any of the Queen's Courts to decide upon the rights of persons to associate together when the association possesses no property... I cannot imagine that any Court of Justice could interfere with such an association if some of the members declined to associate with some of the others. That is to say, the courts, as such, have never dreamt of enforcing agreements strictly personal in their nature... in such cases no Court of Justice can interfere so long as there is no property the right to which is taken away from the person complaining. If that is the foundation of the jurisdiction, the plaintiff, if he can succeed at all, must succeed on the ground that some right of property to which he is entitled has been taken away from him. That this is the foundation of the interference of the courts as regards clubs I think is quite clear.' Then his Lordship referred to certain cases, and came to the conclusion that the plaintiff was not entitled to any relief."

Various cases were cited by the defendant on the principles of natural justice. Among them was *McInnes* v. *Onslow Fane & Anor.*[4] but here the principles which were discussed were a man's liberty to work and his rights to a fair hearing which affected his work and therefore were not relevant to this case.

Again in *Nagle* v. *Feilden & Ors.*[5] natural justice was discussed in the light of a club's refusal of a trainer's licence to a woman. Here again an appeal against the dismissal of her suit against the committee was only allowed on the ground that it affected her liberty to pursue a vocation and not on any other ground.

Plaintiff's argument that if the injunction is dissolved any appeal could only be heard after the expiry of the three months' suspension and the plaintiff would have suffered damage to her reputation has again no merit. To my mind rule 51(i) of the Rules of the Penang Club is clear and the Committee has absolute power to withdraw privileges accorded to Lady Associates without any reason being given and rule 63 which requires enquiry before its committee only applies to Ordinary Members. Therefore the plaintiff's suspension did not breach the rules of natural justice. And, accordingly, as the plaintiff has no proprietary interests in the Club she could not obtain any relief by way of injunction and the courts should not interfere with the decision of the Penang Club Committee which has full responsibility for the administration and discipline of the Club. Therefore this injunction ought to be dissolved.

As to the claim by the plaintiff that plaintiff would suffer if an appeal could only be heard after the period of suspension was over, it is quite clear from her writ itself that she is claiming damages, so if she were to be successful in her appeal against the decision she could still be compensated in damages when the matter comes up for trial.

In any event, in the case referred to *Baird* v. *Wells, supra,* it was held that:

"... in the case of proprietary club, in which members have no right of property, a member who has been expelled by a committee, though the proceedings were irregular, cannot obtain relief by way of injunction, but will be left to obtain it in damages."

For the reasons stated above the injunction was dissolved and the Order of the Court dated June 8, 1981 vacated. In view of this decision the plaintiff's application to cross-examine the deponents of affidavits had no relevance and was dismissed. The court's order was therefore in terms of the defendant's summons dated June 16, 1981.

Plaintiff applied for further arguments in open court. I was satisfied that I have heard all the arguments relevant to the subject-matter. Therefore I agreed to certify that no further hearing was required in open court.

Order accordingly.

Solicitors: *Allen & Gledhill; Lim Kean Siew & Co.*